appointed to fill the vacancy resulting, it is claimed, from C's death. *Held,* that C was not the incumbent of the office and consequently his death did not create a vacancy which could be filled by appointment. *Ballantyne* v. *Bower* (1909), — Wyo. —, 99 Pac. 869.

It is very often a matter of difficulty to determine when a vacancy in office occurs. Necessarily the constitution and statutes involved are of first consideration. With respect, however, to the case in hand, a few controlling principles have found application in the several states. Where, for example, there is no provision in the law that a prior incumbent shall hold over till his successor has been elected and qualified the failure of the newly elected officer to qualify would create a vacancy. *State* v. *Wilson,* 72 N. C. 155. But it is otherwise where the law contains such a provision. *Commonwealth* v. *Hanley,* 9 Pa. St. 513. And again in the latter event the better rule is the one followed by the principal case that no vacancy authorizing an appointment is caused by the death of the person elected and occurring before he has qualified. *Kimberlin* v. *State,* 130 Ind. 120; *People* v. *Lord,* 9 Mich. 227; *State* v. *Elliot,* 13 Utah, 471; *People* v. *Ward,* 107 Cal. 236; *State* v. *Dobbs,* 182 Mo. 359; *State* v. *Seay,* 64 Mo. 89, 27 Am. Rep. 206. The reasoning of those cases (*Olmstead* v. *Augustus,* 112 Ky. 365; *Maddox* v. *York,* 21 Tex. Civ. App. 622; *State* v. *Hopkins,* 10 Ohio St. 509), which hold that a vacancy results when the newly elected dies even before he has qualified is not very convincing and certainly not in accord with what seems to be the weight of authority.

PARTNERSHIP—SALE OF GOODWILL—INJUNCTION.—A co-partner sold his interest on credit under an agreement stipulating that a firm agreement that each partner should give his undivided attention to the interest of the business would remain in force. The retiring partner entered into a competing business, soliciting the old customers, during the life of the firm agreement. *Held,* the remaining partner was entitled to an injunction. *Reber* v. *Pearson* (1909), — Mich. —, 119 N. W. 897.

This case is interesting as involving the right of a partner who has sold the goodwill of a business to solicit old customers. There is a marked diversity of opinion upon this subject. The English cases hold that the vendor of the goodwill of a business has the right to re-engage in the same business unless he expressly agrees not to do so, but that he has no right to solicit the customers of the old firm personally. *Labouchere* v. *Dawson* (1872), L. R. 13 Eq. 332, 25 L. T. 894; *Ginisi* v. *Cooper* (1880), 14 Ch. Div. 596; *Walker* v. *Moffram* (1881), 19 Ch. Div. 355; *Pearson* v. *Pearson* (1884), 27 Ch. Div. 145, overruled by *Trego* v. *Hunt* [1896], App. Cas. 7; *Jennings* v. *Jennings* [1898], 1 Ch. 378; *Curl Bros.* v. *Webster* [1904], 1 Ch. 685. The American cases are in conflict; the leading case was decided by the same court that decided the principal case. *Williams* v. *Farrand,* 88 Mich. 473, 50 N. W. 446, 14 L. R. A. 161. The holding is in variance with the English rule as stated in *Trego* v. *Hunt* (supra), the court saying: "The rule that a retiring partner cannot solicit the customers of the old firm has no support in principle. Every act of his in establishing a new business would

tend to divert the custom of the old firm, and the line between what he is permitted to do in the way of general advertising and personal solicitation cannot be drawn." This is the rule of Louisiana, New York, Maryland, Connecticut and Iowa. *Bergamini* v. *Bastian,* 35 La. Ann. 60; *Ward* v. *Ward,* 15 N. Y. Supp. 913; *Close* v. *Flesher,* 61 Hun 625, 15 N. Y. Supp. 913, 8 Misc. 299; *In re Case,* 122 App. Div. 343; *Armstrong* v. *Bittner,* 71 Md. 119; *Cottrell* v. *Manufacturing Co.,* 54 Conn. 122; *Hanna* v. *Andrews,* 50 Ia. 462; *Findlay* v. *Carson,* 97 Ia. 537. States following the English doctrine are Illinois, Rhode Island, New Jersey, and Ohio. *Rauft* v. *Reimers,* 200 Ill. 386. *Zanturjian* v. *Boonazian,* 25 R. I. 151, 55 Atl. 199; *Althen* v. *Vreeland,* — N. J. Eq. —, 36 Atl. 479; *Scudder* v. *Kilfoil,* 57 N. J. Eq. 171, 40 Atl. 602; *Brass, etc., Co.* v. *Payne,* 50 Ohio St. 115, and a federal decision, *Acker, etc. Co.* v. *McGaw,* 144 Fed. 864. The question is an open one in Massachusetts. See *Old Corner Book Store* v. *Upham,* 194 Mass. 101, 80 N. E. 228. The decision in the principal case is consistent with the holding of *Williams* v. *Farrand* (supra) in that here there was an express agreement restraining the defendant.

TORTS—VIOLATION OF OBLIGATION—TRESPASS—DEFENSE OF NECESSITY FOR SAVING LIFE.—Plaintiff with his wife and children were sailing in a sloop on Lake Champlain; a violent storm arose, whereby the boat and its occupants were placed in great danger, and in order to save them plaintiff was compelled to moor the boat to defendant's dock. Defendant's servant unmoored the boat, whereupon it was driven ashore by the violence of the tempest without plaintiff's fault and destroyed, and plaintiff and the occupants of the sloop were cast into the water and upon the shore, and were injured. In an action for damages, *held,* that plaintiff was entitled to recover. *Ploof* v. *Putnam,* (1908), — Vt. —, 71 Atl. 188.

The cases illustrating the doctrine announced in this case are few, but there appears to be authority in support of it. Among the several defenses that may be interposed to an action of trespass is that of necessity in entering upon the land of another for the preservation of life. JAGGARD, TORTS, Vol. 2, 678. Personal propery of another may be sacrificed to prevent loss of life. *Mouse's Case,* 12 Co. 63. A traveller on a highway which has become impassable by a sudden and recent obstruction may pass upon adjoining land without becoming a trespasser because of the necessity. *Campbell* v. *Race,* 7 Cush. (Mass.) 408, 54 Am. Dec. 728; *Morey* v. *Fitzgerald,* 56 Vt. 487, 48 Am. Rep. 811. An entry upon another's land may be made for the purpose of preventing the spread of fire. *American Print Works* v. *Lawrence,* 23 N. J. L. 590. In *Proctor* v. *Adams,* 113 Mass. 376, defendant went upon plaintiff's beach for the purpose of saving and restoring to the lawful owner a boat which had been driven ashore, and was in danger of being carried off by the sea, and there was no trespass. There is authority to the effect that the owner of a shade tree, finding another's horse hitched to it, is not liable in trespass for removing the horse to a safe place. *Gilman* v. *Emery,* 54 Me. 460. It would seem that the principal case was correctly decided.